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FEDERAL ELECTION  
COMMISSION  
BEFORE THE FEDERAL ELECTION COMMISSION

2011 JUN 15 AM 10: 59

In the Matter of )

MUR 6370 )

MULVANEY FOR CONGRESS )

PATRICIA J. JENKINS, )

AS TREASURER )

GARDNER GORE )

DISMISSAL AND **CELA**  
CLOSURE UNDER THE  
ENFORCEMENT PRIORITY  
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6370 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6370.

In this matter, complainant Donald L. Curlovic asserts that respondents Mulvaney for Congress and Patricia J. Jenkins, in her official capacity as treasurer (collectively "the Committee"), violated the Act and underlying Commission regulations by failing to include disclaimers on various campaign signs, in apparent violation of 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(a) and (b)(1). As an attachment to the complaint, Exhibit A contains a photograph of a sign that reads, "Sack Spratt." The sign lacks any further text or identifying information, including a disclaimer.

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1 Another attachment, labeled Exhibit B, consists of a photograph of what appears to be the same  
2 “Sack Spratt” sign attached to an official Committee sign, which includes the appropriate disclaimer  
3 identifying the Committee. Finally, Exhibit C consists of a photograph of a sign that states, “Fire  
4 Spratt Hire Mulvaney.” Similarly, this sign lacks any further text or identifying information,  
5 including a disclaimer.

6 In response, the Committee states it does not know who erected the “Sack Spratt” signs, and  
7 that the “Sack Spratt” signs attached to official Committee campaign signs are being affixed by  
8 individuals who are not associated with the Mulvaney Campaign. Moreover, the “Sack Spratt”  
9 signs are being placed after the Committee erects its signs. The Committee also explains that an  
10 unidentified individual contacted the campaign to inform the Committee that she made and erected  
11 a homemade sign which read, “Fire Spratt Hire Mulvaney,” and that no one associated with the  
12 Committee was involved with its design or installation.

13 In addition, respondent Gardner Gore also responded to the complaint and addressed the  
14 question as to whether he was responsible for the “Sack Spratt” signs, *see* n. 3, *infra*. Specifically,  
15 in his response, Mr. Gore submitted an affidavit that acknowledges responsibility for the signs, but  
16 also explains that after receiving advice from an attorney<sup>1</sup> he affixed “Paid for by” stickers to the  
17 signs above the web address, “sackspratt.com.”

18 Under the Act and Commission regulations, all public communications<sup>2</sup> made by a political  
19 committee must include disclaimers. 2 U.S.C. § 441d(a)(1); *see also* 11 C.F.R. § 110.11(a)(1). In  
20 addition, public communications that are not authorized by a candidate must include disclaimers

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<sup>1</sup> It should be noted that Mr. Gore sought the counsel of Butch Bowen, who also serves as counsel for the Mulvaney Committee.

<sup>2</sup> “Public communications” include any communication “by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26.

1 stating the name and permanent street address, telephone number or Internet address of the  
2 individual who paid for the communication, in addition to stating that the communication is not  
3 authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3); see also 11 C.F.R.  
4 §§ 110.11(a)(2) and (b)(3). Information available on the public record appears to corroborate the  
5 response that the "Sack Spratt" signs do not belong to the Committee, but instead appear to be part  
6 of an independent effort by Gardner Gore, an individual formerly affiliated with campaign  
7 opponents of former Democratic House member John Spratt.<sup>3</sup>

8 In light of Mr. Gore's submissions, as well as the remedial action taken by Mr. Gore, we  
9 believe no further Enforcement action is necessary. Accordingly, under EPS, the Office of General  
10 Counsel has scored MUR 6370 as a low-rated matter and therefore, in furtherance of the  
11 Commission's priorities as discussed above, the Office of General Counsel believes that the  
12 Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler v.*  
13 *Chaney*, 470 U.S. 821 (1985). Additionally, this Office recommends that the Commission remind  
14 Mr. Gore concerning the Commission's disclaimer requirements pursuant to 2 U.S.C. § 441d(a)(3)  
15 and 11 C.F.R. §§ 110.11(a)(2) and (b)(3).

#### 16 RECOMMENDATIONS

17 The Office of General Counsel recommends that the Commission dismiss  
18 MUR 6370, close the file, and approve the appropriate letters. Additionally, this Office  
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<sup>3</sup> See Jill Cincotta, *Who's Behind Those Provocative Signs?*, HERALD INDEP., Sept. 24, 2010, [http://www.heraldindependent.com/view/full\\_story/9595643/article-Who-s-Behind-Those-Provocative-Signs-?instance=home\\_news\\_lead](http://www.heraldindependent.com/view/full_story/9595643/article-Who-s-Behind-Those-Provocative-Signs-?instance=home_news_lead); Nick McCormac, "Sack Spratt" mastermind creates new political committee, THE ITEM (Sumter, S.C.) Mar. 1, 2011, [http://www.theitem.com/news/article\\_4ce5cd1b-2475-56ee-97df-2e2b95bd7e5a.html](http://www.theitem.com/news/article_4ce5cd1b-2475-56ee-97df-2e2b95bd7e5a.html); Bane Windlow, *Sack Spratt Signs Everywhere*, CAROLINA POLITICS ONLINE (Sept. 28, 2010), <http://www.carolinapoliticsonline.com/2010/09/28/sack-spratt-signs-everywhere>.


recommends that the Commission remind Gardner Gore concerning the Commission's disclaimer requirements pursuant to 2 U.S.C. § 441d(a)(3) and 11 C.F.R. §§ 110.11(a)(2) and (b)(3).

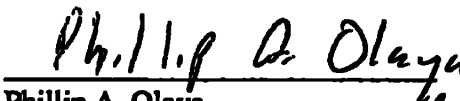
Christopher Hughey  
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